

EXHIBIT

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From: George, Robert W. [Robert.George@KutakRock.com]
Sent: Thursday, January 24, 2008 11:45 AM
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Subject: Oklahoma v. Tyson Foods, Inc., et al. - Deposition of Roger Olsen

David,

Thank you for your call this morning. I will call you shortly to follow up on this e mail, but wanted to get a written record of the situation and defendants' decision out there as soon as possible.

Defendants are striking the deposition of Roger Olsen scheduled for tomorrow, January 25, 2008 due to the untimely production of materials considered by Mr. Olsen. Plaintiffs were ordered to produce all materials considered by Dr. Olsen in connection with the opinions to be offered at the hearing on the preliminary injunction by no later than January 4, 2008 which was 21 days before his deposition scheduled for January 25, 2008. Dkt. No. 1425 (12/26/07 Order). Yesterday, while many of defendant's counsel were in Dr. Fisher's deposition, Plaintiffs delivered a CD of "additional materials" upon which Dr. Olsen is apparently now relying to support his opinions. Our initial review of the CD and our conversation with you this morning confirm that these materials are substantial in volume. Clearly, this production is untimely and Plaintiffs' emerging pattern of violations of the Court's orders regarding production of expert materials is severely prejudicing defendants' ability to work with its own experts and prepare an adequate defense to Plaintiffs' claim.

Defendants will likely seek emergency relief from the Court and request exclusion of the untimely produced materials and any opinions or analysis based upon those materials. Until that issue is ruled upon by the Court, Defendants cannot proceed with the deposition of Mr. Olsen. You and I discussed alternative dates for a possible rescheduled deposition of Mr. Olsen. You indicated that he could be deposed on February 2nd. I explained that this date would prejudice Defendants ability to meet the February 8 deadline for our response brief which we intend to support with expert affidavits. As you know, Olsen is foundational to several of the experts on the Plaintiffs' side and thus his materials and the completion of his deposition impacts numerous experts on the defense side of the case. For the time being, please hold February 2nd for a possible deposition of Olsen. In addition, please advise as to whether February 1 would be an alternative date of availability. Please understand that our willingness to discuss possibly rescheduling the deposition of Olsen is in no way a waiver of or intended to prejudice our right to seek relief from the Court.

Please advise on the scheduling issues at your earliest convenience.

Robert W. George
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